

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA**

KATHERINE ELLER	)	
	)	
Plaintiff,	)	
	)	Case No: 1:21-cv-164
v.	)	
	)	Judges Corker/Steger
KILOLO KIJAKAZI	)	
Acting Commissioner of Social Security	)	
	)	
Defendant.	)	

**REPORT AND RECOMMENDATION**

This case is before the undersigned under 28 U.S.C. § 636(b), Rule 72(b) of the *Federal Rules of Civil Procedure*, and the Rules of this Court for a report and recommendation regarding the disposition of Plaintiff's Motion for Judgment on the Administrative Record [Doc. 13]. During the pendency of this proceeding, however, the parties filed a Joint Motion for Entry of Judgment with Remand under Sentence Four of 42 U.S.C. § 405(g) [Doc. 19]. In such motion, the parties represent to the Court that:

Upon receipt of the Court's remand order, the Appeals Council will issue instructions to offer Plaintiff [Katherine Heller] a new hearing, and issue a new decision that considers all the evidence, including Plaintiff's use of supplemental oxygen, in properly evaluating Plaintiff's residual functional capacity. The parties respectfully request the Court to enter a judgment under sentence four of 42 U.S.C. § 405(g), reversing the ALJ's decision and remanding the case to the Commissioner for further administrative action consistent with this Motion.

The undersigned finds that the parties' Joint Motion to Remand is well taken, and hereby

**RECOMMENDS** that:

1. The Joint Motion for Entry of Judgment with Remand under Sentence Four of 42 U.S.C. § 405(g) [Doc. 19] be **GRANTED**;
2. Plaintiff's Motion for Judgment on the Administrative Record [Doc. 13] be **DENIED AS MOOT**;

3. The Court **REMAND** this case under sentence four of 42 U.S.C. § 405(g) for further administrative proceedings, with instructions to counsel that entry of the Judgment with Remand will commence the appeal period that determines the 30-day period during which a timely application for attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, may be filed; and
4. Upon receipt of the Court's remand order, the Appeals Council **SHALL** issue instructions to offer Plaintiff a new hearing, and issue a new decision that considers all the evidence, including Plaintiff's use of supplemental oxygen, in properly evaluating Plaintiff's residual functional capacity.

**ENTER.**

/s/ Christopher H. Steger  
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

You have the right to *de novo* review by the district judge of the foregoing findings. Any application for review must be in writing; must specify the portions of the findings or proceedings objected to; and must be filed and served no later than fourteen (14) days after being served with a copy of this Report and Recommendation. Failure to file objections within fourteen days constitutes a waiver of any further right to challenge the findings in this matter. *See* 28 U.S.C. § 636(b).